

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 13-CR-192 (RTR)

MARIANO MEZA,

Defendant.

MEZA'S PROPOSED JURY INSTRUCTIONS

Mariano Meza, by undersigned counsel, hereby submits the following proposed instructions to the jury in the above-captioned case.

Meza seeks leave to modify or supplement these instructions, including the submission of instructions bearing on the theory of the defense.

I. ***Seventh Circuit Pattern Instructions***

Meza requests the following current Seventh Circuit Pattern Jury Instructions, to the extent they are applicable:

- **1.01: The Functions of the Court and the Jury**
- **1.02: The Charge**
- **1.03: Presumption of Innocence – Burden of Proof**
- **2.01: The Evidence**
- **2.02: Considering The Evidence**

- **2.03: Direct and Circumstantial Evidence**
- **2.04 Number of Witnesses**
- **3.04: Prior Inconsistent Statements – Defendant (if applicable)**
- **3.09: Statement by Defendant**
- **4.05: Date of Crime Charged**
- **4.06: "Knowingly" – Definition**
- **7.01: Jury Deliberations**

II. *Modified Pattern Instructions*

In addition to the Pattern instructions listed above, Meza requests the following instructions, modified slightly from the Seventh Circuit instructions:

- **3.02: Attorney Interviewing Witnesses**

If this instruction is appropriate, Meza asks that it be supplemented to include the following:

"However, the fact that an attorney may have interviewed a witness in preparation for trial is a factor that may be considered by you in determining how much, if any, weight to give a witness's testimony. You may also consider whether the witness refused an interview with an attorney for either party."

- **2.05 Defendant's Failure to Testify or Present Evidence**

Meza asks that this instruction be given, but re-captioned to read: "Defendant's Right Not to Testify or Present Evidence."

III. *Defendant's Proposed Instruction*

Finally, Meza requests the following instructions:

- **Count One: Alien Illegally or Unlawfully in the United States in Possession of Ammunition**

To sustain the charge of possession of ammunition as an alien illegally and unlawfully in the United States, the government must prove the following propositions beyond a reasonable doubt:

First, that the defendant knowingly possessed ammunition; and

Second, at the time of the charged act, the defendant knew that he was illegally and unlawfully in the United States; and

Third, that the ammunition the defendant possessed had been shipped or transported in interstate or foreign commerce.

If you find from your consideration of all the evidence that the government has proved each of these elements beyond a reasonable doubt, then you should find the defendant guilty.

If, on the other hand, you find from your consideration of all the evidence that the government has failed to prove any one of these elements beyond a reasonable doubt, then you must find the defendant not guilty.

Seventh Circuit Pattern Instruction with Modification to Second Element; *see dkt. 27 at 4* (“the government must prove at trial that Meza possessed the requisite *mens rea* as to the facts establishing his prohibited status.”); *Bryan v. United States*, 524 U.S. 184, 193 (1998) (term “knowingly” in 18 U.S.C. § 924(a)(2) “requires proof of knowledge of the facts that constitute the offense”); *see also Staples v. United States*, 511 U.S. 600, 622 n. 3 (1994) (Ginsburg, J., concurring) (noting “[t]he *mens rea* presumption requires knowledge only of the facts that make the defendant’s conduct illegal.” (citations omitted)); *see also dkts. 12, 28* (Defendant’s Motion to

Dismiss for Failure to Allege an Element of the Offense and Defendant's Objection to the Magistrate Judge's Recommendations).

Dated at Milwaukee, Wisconsin this 31st day of July, 2012.

Respectfully submitted,

/s/ Julie K. Linnen

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